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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,370	02/19/2004	Joanne Kaye	486.0046USU	3571

7590 03/21/2006

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EXAMINER
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HALE, GLORIA M

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/782,370	<b>Applicant(s)</b> KAYE ET AL.	
	<b>Examiner</b> Gloria Hale	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-20 is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Claims 1-20 are present in the application.

Claims 16-20 are allowed as indicated in the previous Office Action.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Judson (US 6,174,217).

Judson discloses a brassiere 14 with cups 18, a central gore panel 24 and side panels 22 with each cup having an inner layer 32 and an outer layer 30 with the inner layer 32 being of a sheer/transparent material or with cut outs such as netting or lace. The third layer or spacer layer is 36 and can be of lace or sheer transparent material, which has holes or perforations in a free form design and is breathable as broadly claimed. The brassiere and the third layer insert is made of the claimed materials and are sewn or have a mechanical connection of a pocket as broadly claimed. (See Judson, col. 2, line 60- col. 4, line 29 and figures 1-3).

Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Cheng(US 6,306,006).

In regard to claims 1,2,5,9,11,12 and 15, Cheng discloses a brassiere comprising a pair of breast cups ( 2) with a central panel ( not numbered) between the cups as seen in figure 1; a pair of side panels (as seen in figure 1- not numbered) each connected to a separate one of said pair of breast cups. Each breast cup has a first fabric layer 12, a second fabric layer 12, and a third fabric layer 11 therebetween the first and second fabric layers. The third fabric layer as a first and second surface with a plurality of perforations, valleys or dimples ( 13) as broadly claimed wherein the third fabric layer is a spacer fabric between the cup layers. (See Cheng figures 1 and 2 and col. 1, lines 1-20).

In regard to claims 3, 4, 6-8, 13 and 14, Cheng discloses the perforations as being in a free-form pattern( in columns and rows or linear) as broadly claimed. The layers are connected by a sewing method and the third fabric layer is made from a cotton/silk material. The first and second fabric layers are peripherally connected with the third layer there between. Additionally in regard to claim 10, the first surface of the spacer(third layer) is smooth between the perforations.

### ***Response to Arguments***

Applicant's arguments filed 1-5-06 in regard to Judson have been fully considered but they are not persuasive. In response to applicant's arguments on pages 17-19 of the response applicant is ignoring an inherent function of the Judson insert. Judson's insert layer adds an additional layer, which would stiffen the cup and thereby

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provide support to the cup. The third layer of Judson is also a sheer woven fabric wherein the interstices within the weave itself provide perforations, dimples and valleys. The insert inherently acts as a spacer fabric between the two cup layers. The interstices between the fabric threads provide the breath ability as broadly claimed. The design formed by the perforations is a free-form design as broadly claimed. The added rejection of Cheng also discloses the multilayer construction. The specific formation of the perforations, dimples or valleys as formed by the anvil has not been claimed.

### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Huber et al (US 4,091,819) discloses separate central panel 19 and separate side panels sewn to the cups (13,14) even though they were not claimed as specifically being separate seen on panels. Lee (US 6,540,585) discloses perforations for ventilation in various patterns.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gloria Hale  
Primary Examiner  
Art Unit 3765

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